

Remarks

Claims 7, 13, and 16-19 are pending in this application.

Claim 13 is amended herein to recite that the DNA molecule comprises a nucleotide sequence selected from the recited group to clarify the meaning of the Markush group. Moreover, SEQ ID NO:11 is deleted from the Markush group to overcome the rejection for being anticipated by Marra et al. In view of the amendments, claim 13 should overcome the objection and rejection in the Office Action and be in condition for allowance.

Claim 16 is amended to claim a DNA molecule that is homologous or complementary to nucleotides 1-324 of SEQ ID NO:7 or nucleotides 141-1183 of SEQ ID NO:8. These defined regions of SEQ ID NO:7 and SEQ ID NO:8 are free of the homologous fragments positioned 1-202 and 2239-2378 of SEQ ID NO:27 as disclosed in Barry et al. Because the DNA detection kit of claim 16 does not contain elements homologous to the sequence of SEQ ID NO:27 in Barry et al., claim 16 is patentably distinguishable from the DNA kit disclosed in Barry et al. Bases for the amendments can be found, for example, in the Sequence Listing and the original claims.

The foregoing amendments are either made to comply with the requirement of form in the Office Action or to be in better form for consideration on appeal. The entry of these amendments is respectfully requested in accordance with 37 CFR 1.116(b). Applicants also believe and submit that these amendments put the application in condition for immediate allowance or appeal.

1. Applicants acknowledge with appreciation the entry of the response to the Office Action filed on April 22, 2005.

2. Status of Application

Applicants acknowledge the finality of the Office Action. This paper is a first reply to the final rejection in the Office Action mailed June 29, 2005.

3. Claim Rejections – 35 USC § 102

The Office Action rejected claims 7 and 16-19 under 35 USC 102(e) as being anticipated by Barry et al. (USPN. 6,448,476). As to claim 7, the Office Action cited a pair of DNA molecules disclosed in Barry et al. as having identical composition and similar properties as the DNA pair in claim 7. In particular, without producing sequence alignments, the Office Action pointed to a fragment position 1-202 of SEQ ID NO. 27 and a fragment 2239-2378 of SEQ ID No. 27 of Barry et al. as corresponding first and second DNA molecules in the current application. Upon closer examination, it is readily determinable that the cited fragment position 1-202 of SEQ ID NO:27 (first DNA molecule) and the fragment 2239-2378 of SEQ ID NO:27 (second DNA molecule) from Barry et al. find their match, respectively, with the 3'-end (containing rice actin promoter 1) of **SEQ ID NO:7** and the 5'-end (containing a terminator sequence) of **SEQ ID NO:8** (not claimed in claim 7) of the current application. Since claim 7 requires that both of the pair of DNA molecules be selected from SEQ ID NO: 7, the claimed DNA pair is not anticipated by the cited pair of DNA molecules in the Barry et al. reference. To be anticipated, the claim would have had to require selection from both SEQ ID NOs: 7 and 8, and it does not. Reconsideration and removal of the 35 USC 102 rejection of claim 7 is respectfully requested.

Claim 16 was rejected under 35 USC 102(e) over a kit comprising DNA molecules disclosed in Barry et al. The kit comprising DNA molecules in Barry et al. is directed to molecules or other reagents used to identify AMPA acyltransferase gene sequences. However, in the view of the Office Action, the target sequence extended beyond the AMPA acyltransferase coding sequence and included the rice actin 1 promoter and a terminator sequence as shown in SEQ ID NO:27 of Barry et al. For purpose of facilitating advancement of the prosecution, Applicants have amended claim 16 to claim a DNA molecule of sufficient length that is homologous or complementary to nucleotides 1-324 of SEQ ID NO:7 or nucleotides 141-1183 of SEQ ID NO: 8. The aforementioned fragments of SEQ ID NO:7 and SEQ ID NO:8 are devoid of the rice actin 1 promoter and

the terminator sequences. This ground of rejection should be withdrawn in view of the different DNA molecules constituting the DNA detection kits in the amended claim 16 from those disclosed in Barry et al.

Claims 17-19 were rejected over Barry et al. The Office Action contends that Barry et al. teach a pair of DNA molecules that are at least 18-30 nucleotides in length. For the reasons put forth above for claim 7, it is clear that the claimed pair of DNA molecules is chemically and functionally distinct from the DNA pair disclosed in Barry et al.

Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

Claim 13 was rejected under 35 USC § 102(b) as being anticipated by Marra et al. (EST, 1996). The Office Action pointed out that Marra et al. taught a DNA molecule having absolute homology with the claimed SEQ ID NO:11. Claim 13 has been amended to delete SEQ ID NO:11 and therefore this ground of rejection should be overcome. Reconsideration and removal of the 35 USC 102(b) rejection is respectfully requested.

4. Applicants acknowledge and thank the Examiner for withdrawing the rejection under 35 USC 101.

5. The rejection of claim 13 under 35 USC 112 was maintained. The Office Action stated that it was not clear whether the DNA molecule consisted of a sequence of SEQ. ID. No. or the DNA molecule comprises the sequence of the SEQ ID No. Claim 13 has been amended for clarity to recite that the DNA molecule comprises a nucleotide sequence selected from the recited Markush group. Applicants respectfully request that this ground of rejection be reconsidered and withdrawn.

6. Applicants acknowledge and thank the Examiner for the withdrawal of the rejection under 35 USC 102(b) as anticipated by Sigma catalog.

7. Applicants acknowledge and thank the Examiner for the withdrawal of the rejection under 35 USC 102(b) as anticipated by McElory et al. (USP. 5,641,876).

The above amendments incorporate the Examiner's suggestion made in the Final Office Action and introduce no issues not encompassed by those previously considered. This amendment is therefore appropriate for entry under Rule 1.116. Reconsideration of the referenced application and amended claims and allowance at an early date is requested. Should any questions arise or if Applicants or Applicants' attorney can facilitate the examination of this application, it is respectfully requested that the PTO contact the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink that reads "Gary M. Bond". The signature is written in a cursive, flowing style.

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